

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DYANEL BOLES, et al.,

Plaintiffs,

vs.

COURVOISIER, et al.,

Defendants.

Case No.: 11-cv-04854-YGR

**ORDER DISMISSING UNSERVED DEFENDANTS
COURVOISIER, URBANWORLD, AND VIBE**

Plaintiffs have been ordered to show cause why this action should not be dismissed as to Defendants Courvoisier, UrbanWorld, and Vibe (“Unserved Defendants”) under Fed. R. Civ. P. 4(m). (Dkt. No. 52.) As the Court previously stated, the Federal Rules of Civil Procedure apply to actions removed from state court. Fed. R. Civ. P. 81(c)(1). Under Rule 4(m), “[i]f a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

Plaintiffs filed a late response to the Order to Show Cause on June 27, 2012. (Dkt. No. 54 (“Response”).) Plaintiffs’ counsel identifies the confusing removal to federal court as the “only reason” that Unserved Defendants have not been served to date. Response at 1. However, counsel also asserts that Courvoisier had not been served because Plaintiffs’ counsel was or is unclear how to serve a company in France under the Hague Convention. Response at 2. As to Vibe and UrbanWorld, who are located in New York, Georgia and/or Florida, counsel states that these defendants were, at first, difficult to locate, and that Plaintiffs’ counsel is now in the process of determining the rules for how to serve out-of-state defendants. *Id.* Plaintiffs’ counsel’s response

provides no additional reasons to explain the failure to serve than had been previously provided to the Court.


The Court finds that Plaintiffs have not shown good cause for their failure to serve. As of the date that the Court ordered Plaintiffs to show cause, it had been 245 days since the action had been removed from state court. Moreover, the action was first-filed in state court on August 7, 2009. Plaintiffs are well outside of the 120-day period provided under Fed. R. Civ. P. 4(m) and no apparent action has been taken to serve the Unserved Defendants other than blanket statements that Plaintiffs intend to do so.

While Fed. R. Civ. P. 4(m)'s 120-day deadline "does not apply to service in a foreign country under Rule 4(f) or 4(j)(1)," this does not justify Plaintiffs' complete inaction for the last 245 days that the case has been in federal court. For these reasons, Defendants Courvoisier, UrbanWorld, and Vibe are hereby **DISMISSED WITHOUT PREJUDICE**.

The Order to Show Cause Hearing scheduled for July 2, 2012 is **VACATED**.

IT IS SO ORDERED.

Dated: June 29, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE